

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BEVERLY RAINES; SANDRA BOSLEY;  
CHALICE STALLWORTH; AUDREY  
WEAVER; JACQUES JOHNSON; and  
MARCUS PERKINS,

Plaintiffs,

C09-203 TSZ

V.

## ORDER

SEATTLE SCHOOL DISTRICT NO. 1,

## Defendants.

THIS MATTER comes before the Court on defendant's motion for summary

judgment, docket no. 250. Having reviewed all papers filed in support of, and in

opposition to defendant's motion, the Court enters the following order.

## Discussion

## A. Standard for Summary Judgment

The Court shall grant summary judgment if no genuine issue of material fact exists

The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A fact is material if

1 it might affect the outcome of the suit under the governing law. Anderson v. Liberty  
2 Lobby, Inc., 477 U.S. 242, 248 (1986). To survive a motion for summary judgment, the  
3 adverse party must present affirmative evidence, which “is to be believed” and from  
4 which all “justifiable inferences” are to be favorably drawn. Id. at 255, 257. When the  
5 record, however, taken as a whole, could not lead a rational trier of fact to find for the  
6 non-moving party, summary judgment is warranted. See Beard v. Banks, 548 U.S. 521,  
7 529 (2006) (Rule 56 “mandates the entry of summary judgment, after adequate time for  
8 discovery and upon motion, against a party who fails to make a showing sufficient to  
9 establish the existence of an element essential to that party’s case, and on which that  
10 party will bear the burden of proof at trial.” (quoting Celotex, 477 U.S. at 322)).

11 **B. Claim under 42 U.S.C. § 1981**

12 All six remaining plaintiffs allege racial discrimination in the employment context  
13 under 42 U.S.C. § 1981. Under § 1981, to prevail on such claim against a municipal  
14 employer, a plaintiff must prove that the challenged employment decision resulted from a  
15 “policy or custom” of the municipality. See Fed. of African Am. Contractors v. City of  
16 Oakland, 96 F.3d 1204 (9th Cir. 1996) (holding that the Civil Rights Act of 1991, which  
17 amended § 1981, statutorily overruled Jett v. Dallas Indep. Sch. Dist., 491 U.S. 701  
18 (1989), and created an implied right of action against municipalities, but did not alter the  
19 “policy or custom” requirement of Monell v. Dep’t of Soc. Servs. of N.Y.C., 436 U.S. 658  
20 (1978)). Plaintiffs make no allegation that defendant Seattle School District No. 1 has an  
21 “official policy or established custom” of discriminating against employees on the basis  
22 of race, that any individual who engaged in discriminatory behavior was “an official with

1 final policy-making authority,” or that an official with policy-making authority “ratified”  
2 a subordinate’s racially discriminatory action. *See Clouthier v. County of Contra Costa*,  
3 591 F.3d 1232, 1249-50 (9th Cir. 2010) (describing various legal theories for municipal  
4 liability). Instead, plaintiffs appear to rely on the contention that defendant failed to  
5 adequately train its employees to avoid racial discrimination.

6 To impose liability on a municipal employer for failure to adequately train its  
7 employees, a plaintiff must prove that the government’s omission amounted to  
8 “deliberate indifference” to the right at issue, *Clouthier*, 591 F.3d at 1249, which is here  
9 “the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens,” 42  
10 U.S.C. § 1981(a). The “deliberate indifference” standard is met when “the need for more  
11 or different training is so obvious, and the inadequacy so likely to result in the violation  
12 of . . . rights, that the policymakers of the city can reasonably be said to have been  
13 deliberately indifferent to the need.” *Clouthier*, 591 F.3d at 1249 (quoting *City of Canton*  
14 *v. Harris*, 489 U.S. 378 (1989)). A plaintiff must demonstrate that the failure to train  
15 “reflects a ‘deliberate’ or ‘conscious’ choice by a municipality.” *Id.* (quoting *Harris*, 489  
16 U.S. at 389). To adopt a lesser standard of fault “would result in *de facto respondeat*  
17 *superior* liability on municipalities,” which the United States Supreme Court has  
18 consistently rejected, and would force the federal courts to engage in “an endless exercise  
19 of second-guessing municipal employee-training programs,” a task for which federal  
20 courts are “ill suited” and which would “implicate serious questions of federalism.” *Id.*  
21 (quoting *Harris*, 489 U.S. at 392).

1       In this case, plaintiffs have not made the type of showing required to survive  
2 summary judgment. Plaintiffs have proffered no evidence concerning the training  
3 programs offered by defendant or how such programs are in any way deficient. They  
4 have presented no information indicating that defendant knew or should have known that  
5 more or different training was needed and deliberately or consciously refused to provide  
6 such training. Thus, with respect to plaintiffs' § 1981 claim, the Court concludes that, as  
7 a matter of law, plaintiffs have failed to identify any triable issue.

8 **C. Remaining Claims**

9       With respect to the remaining claims, namely (i) violation of the Rehabilitation  
10 Act of 1973, alleged by plaintiffs Johnson, Perkins, Stallworth, and Weaver; (ii) violation  
11 of the Washington Law Against Discrimination, alleged by all six remaining plaintiffs  
12 with regard to a combination of one or more of the following grounds: age, gender, race,  
13 disability, and/or retaliation; and (iii) defamation, alleged by plaintiffs Stallworth and  
14 Weaver, the Court DEFERS ruling on defendant's motion for summary judgment and  
15 SCHEDULES oral argument concerning such claims for **Thursday, January 31, 2013**,  
16 **at 10:00 a.m.** The parties are DIRECTED to be prepared to discuss at the hearing  
17 whether the claims of any remaining plaintiffs should be consolidated for purposes of  
18 trial, with trial to proceed forward on March 4, 2013.

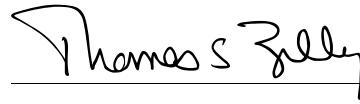
19 **Conclusion**

20       For the foregoing reasons, defendant's motion for summary judgment, docket  
21 no. 250, is GRANTED in part and DEFERRED in part. Plaintiffs' second cause of action  
22 for racial discrimination, brought pursuant to 42 U.S.C. § 1981, is DISMISSED with  
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1 prejudice. Defendant's motion is otherwise DEFERRED until oral argument, which is  
2 SET for January 31, 2013, at 10:00 a.m.

3 IT IS SO ORDERED.

4 Dated this 18th day of January, 2013.

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6   
7 THOMAS S. ZILLY  
8 United States District Judge

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